

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Donaghy	Team: Squad #2	CCRB Case #: 201809935	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/07/2018 5:00 PM	Location of Incident: 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 5/7/2020	EO SOL 12/22/2020	
Date/Time CV Reported Thu, 11/29/2018 1:26 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 11/29/2018 1:26 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Todd Jacoby	31546	932819	044 PCT
2. An officer			044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Todd Jacoby	Abuse: Police Officer Todd Jacoby did not process § 87(2)(b)'s complaint regarding officers.	
B. An officer	Abuse: An officer did not process § 87(2)(b)'s complaint regarding officers.	
C.POM Todd Jacoby	Abuse: Police Officer Todd Jacoby interfered with § 87(2)(b)'s use of a recording device.	
D. An officer	Abuse: An officer interfered with § 87(2)(b)'s use of a recording device.	
E.POM Todd Jacoby	Abuse: Police Officer Todd Jacoby threatened to arrest § 87(2)(b).	

Case Summary

On November 19, 2018, § 87(2)(b) was interviewed at the CCRB regarding case # § 87(2)(b). During that interview, § 87(2)(b) provided a statement regarding a new complaint, which was then split into this case. This complaint was originally assigned to Investigator Filip Woroniecki but was reassigned to Investigator Matthew Donaghy on July 25, 2019.

At approximately 8:45 p.m. on November 7, 2018, § 87(2)(b) entered the 44th Precinct stationhouse in order to make a complaint against officers (that complaint is the subject of CCRB # § 87(2)(b)). At the stationhouse front desk, § 87(2)(b) encountered Police Officer Todd Jacoby and an unidentified officer of the 44th Precinct. § 87(2)(b) requested Police Officer Jacoby and the unidentified officer assist him in filing a complaint against NYPD officers, but they did not do so. Police Officer Jacoby and the unidentified officer told § 87(2)(b) that to file a complaint in-person he would have to speak with a supervisor, and that he may have to wait for a period of hours for a supervisor to be available (**Allegation A: Abuse of Authority – Refusal to process civilian complaint, § 87(2)(g)**) (**Allegation B: Abuse of Authority – Refusal to process civilian complaint, § 87(2)(g)**). § 87(2)(b) took out his phone to take a photo, but Police Officer Jacoby and the unidentified police officer told him that he was not allowed to record in the stationhouse (**Allegation C: Abuse of Authority – Interference with recording, § 87(2)(g)**) (**Allegation D: Abuse of authority – Interference with recording, § 87(2)(g)**). § 87(2)(b) then asked for Police Officer Jacoby's name and shield number, to which Police Officer Jacoby replied by telling § 87(2)(b) to "get out," of the stationhouse. After § 87(2)(b) asked for Police Officer Jacoby's name and shield number several more times, Police Officer Jacoby provided his shield number and last name to § 87(2)(b). Police Officer Jacoby then threatened § 87(2)(b) with arrest if he did not leave the stationhouse (**Allegation E: Abuse of Authority – Threat of arrest, § 87(2)(g)**). After that, § 87(2)(b) left the stationhouse.

§ 87(2)(b) provided an audio recording he made of this incident, which is stored in IA # 5 (Board Review 01) and is transcribed in IA # 27 (Board Review 02). The investigation also obtained stationhouse footage from the 44th Precinct stationhouse but ultimately determined that the footage covered the wrong time period since § 87(2)(b) provided an incorrect incident time. The stationhouse footage is located in IA # 61 (Board Review 08) and is summarized in IA # 66 (Board Review 09).

Findings and Recommendations

Allegation (A) Abuse of Authority – Police Officer Todd Jacoby did not process § 87(2)(b)'s complaint regarding officers.

Allegation (B) Abuse of Authority – An officer did not process § 87(2)(b)'s complaint regarding officers.

On November 19, 2018, § 87(2)(b) was interviewed at the CCRB. On April 23, 2019, Police Officer Jacoby was interviewed at the CCRB. On September 5, 2019, Police Officer Phillip Reyes was interviewed at the CCRB.

§ 87(2)(b) stated that at approximately 4:00 p.m. on November 7, 2018, he entered the 44th Precinct stationhouse to file a complaint against NYPD officers. § 87(2)(b) approached the front desk of the stationhouse and there encountered Police Officer Jacoby and an unidentified officer. When § 87(2)(b) told Police Officer Jacoby and the unidentified officer that he wanted to file a

complaint against an NYPD officer, Police Officer Jacoby pointed § 87(2)(b) to a poster on the wall with instructions about how to file a CCRB complaint. § 87(2)(b) replied by stating that he wanted to file a complaint in-person at the 44th Precinct stationhouse. Police Officer Jacoby stated that the 44th Precinct did not have the “resources,” to take § 87(2)(b)’s complaint at that moment. § 87(2)(b) verbally objected, asking to speak to a supervisor, to which Police Officer Jacoby replied that § 87(2)(b) would have to wait for “a few hours,” to do so. At no point thereafter did either Police Officer Jacoby or the unidentified officer take § 87(2)(b)’s complaint.

During his CCRB interview Police Officer Jacoby stated that at approximately 5:00 p.m. on November 7, 2018, he was working behind the desk at the 44th Precinct stationhouse. § 87(2)(b) entered the stationhouse and began to have a conversation with a uniformed NYPD officer whose identity Police Officer Jacoby was unable to recall. Police Officer Jacoby approached § 87(2)(b) spoke with him, and learned that § 87(2)(b) wished to make a complaint against an officer. § 87(2)(b) asked Police Officer Jacoby to speak to a Sergeant, and Police Officer Jacoby stated that no Sergeant was available at that moment and that § 87(2)(b) would have to wait for one to be.

Police Officer Jacoby told § 87(2)(b) that he would have to file a complaint on the CCRB website, on a telephone call to the CCRB, or through a call to 311. § 87(2)(b) expressed dissatisfaction with these options, and at that point Police Officer Jacoby instructed him to leave the stationhouse. Police Officer Jacoby did not take § 87(2)(b)’s complaint at any point. During his CCRB interview Police Officer Jacoby stated that only a “Sergeant or above,” can take a civilian complaint against an officer, and that officers “don’t take CCRBs.”

Police Officer Reyes did not recall this incident. However, Police Officer Reyes stated that all supervisors being absent from the front desk of the 44th Precinct stationhouse for a period of hours would, “Never happen.”

§ 87(2)(b) recorded audio of the entirety of this incident, which is stored in IA # 5 (Board Review 01) and is transcribed in full in IA # 27 (Board Review 02). An iINPUT-ACE analysis of this audio, documented in IA # 84 (Board Review 03), shows that it was recorded at 8:44 p.m. on November 7, 2018. Four individuals can be heard on the recording; § 87(2)(b) two subject officers, and one officer unrelated to this incident. During his CCRB interview Police Officer Jacoby positively identified his own voice as one of the subject officers on the recording. However, neither Police Officer Jacoby nor Police Officer Reyes identified the voice of the second subject officer.

On the audio recording, § 87(2)(b) approaches the front desk of the 44th Precinct stationhouse and asks to file a complaint against officers. Police Officer Jacoby gives § 87(2)(b) written instructions on how to file a complaint, but does not offer to take § 87(2)(b)’s complaint. When § 87(2)(b) states that the instructions indicate that filing a complaint in-person at a stationhouse is an option, and that he had come to the 44th Precinct stationhouse with the intention of doing so, the unidentified officer states, “We don’t, we don’t have a lot of resources right now [...] you may be waiting for a couple hours.” § 87(2)(b) is then told by the unidentified officer that his options are to call 311 or to wait for a supervisor to become available. When § 87(2)(b) asks if either Police Officer Jacoby or the unidentified officer would, “Assist [him] at all,” with filing a complaint, the unidentified officer states that § 87(2)(b) will have to wait, “a while,” as the stationhouse is busy, and Police Officer Jacoby states, “We’re giving you numerous options.” At no point does either the unidentified officer or Police Officer Jacoby offer to take § 87(2)(b)’s complaint themselves.

Patrol Guide Procedure 207-31 (Board Review 04) details the appropriate actions to take when a

civilian indicates that they wish to make a complaint against an NYPD officer. Officers are to interview the complainant regarding the substance of their complaint and are required to provide the complainant with a copy of PD313-154, the Civilian Complaint Report, to be prepared in the complainant's handwriting. This procedure applies to all uniformed members of service, and only requires the notification or participation of an Investigating Supervisor after the Civilian Complaint Report is filled out.

§ 87(2)(g)

The 44th Precinct Roll Call for Tour 3 on November 19, 2019, lists Police Officer Reyes as the telephone switchboard operator at the time when this incident occurred (Board Review 05). However, a comparison of the audio provided by § 87(2)(b) with the audio of Police Officer Reyes' interview at the CCRB indicates that the unidentified subject officer does not have the same voice as Police Officer Reyes. The telephone switchboard operator log from November 7, 2018, does not contain any entries after 11:00 a.m., so it is not documented if another officer replaced Police Officer Reyes at the front desk of the 44th Precinct stationhouse during this incident (Board Review 06). Police Officer Reyes' memo book from November 7, 2018, lists his assignment as the telephone switchboard operator at 3:15 p.m., and then contains no additional entries until 9:00 p.m. (Board Review 07). During his CCRB interview § 87(2)(b) only described the unidentified subject officer as an overweight white male in a blue uniform.

The investigation obtained footage of the 44th Precinct stationhouse from 2:59:59 p.m. until 4:59:59 p.m. on November 7, 2018, which is located in IA # 61 (Board Review 08) and is summarized in IA # 66 (Board Review 09). However, the iNPUT-ACE analysis of § 87(2)(b)'s audio indicated that this incident did not occur until 8:45 p.m., and a review of the stationhouse footage revealed that at no point during between 2:59:59 p.m. until 4:59:59 p.m. did § 87(2)(b) enter the 44th Precinct stationhouse.

§ 87(2)(g)

Allegation (C) Abuse of Authority – Police Officer Todd Jacoby interfered with § 87(2)(b)'s use of a recording device.

Allegation (D) Abuse of Authority - An officer interfered with § 87(2)(b)'s use of a recording device.

It is uncontested that § 87(2)(b) only attempted to take a photograph of the CCRB poster that

was hanging in the 44th Precinct stationhouse. Though § 87(2)(b) was making an audio recording throughout the entirety of this incident, it is uncontested that no officer was aware that he was doing so at the time he was ordered to stop recording.

During his CCRB interview § 87(2)(b) stated that, after it became clear to him that Police Officer Jacoby and the unidentified officer would not take his complaint, he attempted to take out his cell phone to take a picture of posted instructions for how to make a complaint to the CCRB. Police Officer Jacoby immediately stated to him, “No recording here.” When § 87(2)(b) stated that he only wanted to take a photograph of the poster, Police Officer Jacoby stated again, “No recording here.” At this point § 87(2)(b) placed his cell phone back into his pocket and he did not take it back out for the remainder of this incident.

§ 87(2)(b)'s audio recording, which is stored in IA # 5 (Board Review 01) and is transcribed in full in IA # 27 (Board Review 02), captured both Police Officer Jacoby and the unidentified officer telling him that he was not allowed to record within the stationhouse on his cell phone. As the unidentified officer is telling § 87(2)(b) that he can have a seat, he suddenly states, “You can’t use your phone in the Precinct.”

§ 87(2)(b) states, “No, I just want to take a picture of this,” but the unidentified officer states again, “You can’t use your phone in the Precinct.” A few moments later, § 87(2)(b) states that he would like to have a picture or copy of the posted information for making a complaint to the CCRB, and both Police Officer Jacoby and the unidentified officer reply simultaneously that § 87(2)(b) is not allowed to use his phone in the Precinct stationhouse. Police Officer Jacoby then states, “You’re not allowed to use any sort of recording [inaudible] it’s posted right there, right in front of you.”

According to Patrol Guide Procedure No. 203-29 (Board Review 14), “Members of the public are not allowed to photograph and/or record police activity within Department facilities. Members of the service may order any member of the public who is photographing or recording within Department facilities to stop such activity.” However, it is uncontested that § 87(2)(b) only wished to take a picture of the CCRB poster hanging in the 44th Precinct stationhouse. Further, when § 87(2)(b) specifically requested to take a picture of only the posted information for making a complaint to the CCRB both Police Officer Jacoby and the unidentified officer told him that was not allowed to do so.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation (E) Abuse of Authority – Police Officer Todd Jacoby threatened to arrest § 87(2)(b)

During his CCRB interview § 87(2)(b) stated that there were instructions posted on a wall near the front desk of the 44th Precinct stationhouse which detailed how to file a complaint with the CCRB. § 87(2)(b) took his phone out of his pocket, intending to take a picture of the instructions, but Police Officer Jacoby immediately told § 87(2)(b) that there was no recording allowed in the stationhouse. When § 87(2)(b) replied that he only wished to take a photo of the poster, Police Officer Jacoby again stated that there was no recording allowed in the stationhouse. § 87(2)(b) then placed his phone back into his pocket without taking a photograph. At this point § 87(2)(b) left the stationhouse without being ordered to do so by either Police Officer Jacoby or the unidentified officer.

A few seconds after exiting the 44th Precinct stationhouse § 87(2)(b) decided that he wanted to obtain Police Officer Jacoby's information, and he re-entered the stationhouse. § 87(2)(b) approached Police Officer Jacoby and asked him for his name and shield number. Police Officer Jacoby replied by immediately telling § 87(2)(b) to leave the stationhouse. § 87(2)(b) stated that he had a right to know Police Officer Jacoby's identifying information, and Police Officer Jacoby replied by telling § 87(2)(b) to leave the stationhouse again while stating his shield number. § 87(2)(b) then asked for Police Officer Jacoby's last name, which Police Officer Jacoby stated. Police Officer Jacoby then stood up and walked towards § 87(2)(b) while holding a pair of handcuffs in his hand and stated, "You have three seconds to get out of the precinct or I'm locking your ass up." § 87(2)(b) then exited the stationhouse. At no point during this interaction did § 87(2)(b) raise his voice, make any sudden movements, or speak to any other officers at the 44th Precinct stationhouse.

Police Officer Jacoby did not recall § 87(2)(b) ever taking out his cell phone and did not recall if § 87(2)(b) was ever told he could be arrested or placed in handcuffs. Police Officer Jacoby recalled that after § 87(2)(b) was told that he would have to wait for a supervisor to make a complaint against officers he, "became disorderly." When asked to clarify what, "became disorderly," meant, Police Officer Jacoby stated, "Maybe disorderly is not the correct word. He wasn't listening to instruction and he had to be repeatedly told." At that point Police Officer Jacoby told § 87(2)(b) to leave the stationhouse. Police Officer Jacoby did not recall § 87(2)(b)'s reaction to being told to leave the stationhouse, but stated that § 87(2)(b) left shortly after being told to do so.

The audio of this incident corroborates § 87(2)(b)'s description of this incident. When § 87(2)(b) takes out his cellular phone to take a picture of the information for reporting a complaint to the CCRB, the unidentified officer immediately tells him that he is not allowed to use his phone in the stationhouse. § 87(2)(b) states that he would like to, "to take a picture of [the written information] or have a copy of [it]," but both Police Officer Jacoby and the unidentified police officer reply by telling § 87(2)(b) that he is not allowed to use "any sort of recording," in the stationhouse. § 87(2)(b) does not attempt to use his cellular phone to take a visual recording after being told that he is not allowed to do so. After being told not to take a photo § 87(2)(b) asks the officers if he can be provided with a copy or sent a picture of the CCRB complaint information, to which Police Officer Jacoby responds, "Absolutely not," and the unidentified police officer responds, "Have a good night, sir." § 87(2)(b) then leaves the stationhouse briefly without having been directly ordered to do so.

A few seconds later § 87(2)(b) can be heard to re-enter the stationhouse, and he states, "Excuse me, what is your badge number?" Police Officer Jacoby immediately replies, "get out," but § 87(2)(b) requests Police Officer Jacoby's shield number again, stating that he has, "the right to know." Police Officer Jacoby verbally states his shield number, and then tells § 87(2)(b) to, "get out," again. The following exchange then takes place, starting at timecode 2:30 on the audio recording;

MR. § 87(2)(b): "Your name?"

POLICE OFFICER JACOBY: "Yes."

MR. § 87(2)(b): "Your name?"

POLICE OFFICER JACOBY: "Get out."

MR. § 87(2)(b): "I have the right to know. Your name?"

POLICE OFFICER JACOBY: "Jacoby. Get out."

MR. § 87(2)(b): "Jacoby what? First and last."

POLICE OFFICER JACOBY: "Get out."

MR. § 87(2)(b): "First and last? I have the right to know, I'm not doing anything wrong."

POLICE OFFICER JACOBY: "Last chance sir. It's your last chance or you're going in handcuffs."

§ 87(2)(b) then voluntarily leaves the stationhouse, stating, "Have a good night. All I did was come ask a question." Shortly afterwards the recording ends.

As previously discussed, according to Patrol Guide Procedure No. 203-29 (Board Review 14) members of the public are not allowed to photograph or record police activity within Department facilities. The Patrol Guide further states that if a person refuses to stop recording, they should then be ordered to leave the premises, and if they refuse to leave the premises officers are to take proper enforcement action under trespass statutes. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Under Penal Law § 140.05 (Board Review 10), the violation of trespass occurs when one knowingly enters or remains unlawfully in or upon premises. In People v. Reape, 868 N.Y.S.2d 497 (2008) (Board Review 11) the courts discussed the applicability of the trespass statute to an NYPD Precinct stationhouse. Though an individual has the license and privilege to remain on premises that are open to the public, they can be lawfully ordered to leave by an authorized person. The court states that the license to remain on municipal or state property that is generally open to the public can be regulated to prevent interference with the ordinary use of the property by other members of the public with an equal right of access.

However, this order for an individual to leave municipal or state property that is generally open to the public must be for adequate cause. Quoting from People v. Hedemann, 107 Misc 2d 241, 242, 438 NYS2d 172 (1981), in People v. Reape the court states that, "the critical question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." The court determined that behavior of Mr. Reape - who was allegedly "yelling and screaming," was demanding to speak to a police detective who did not work in the stationhouse he was in, and was acting in an unruly fashion - was incompatible with the normal activity of an NYPD stationhouse.

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This was the 3rd CCRB complaint to which § 87(2)(b) had been a party (Board Review 12).
 - § 87(2)(b)
 -
- Police Officer Todd Jacoby has been a member of service for sixteen years and has been a subject in seven CCRB complaints and seventeen allegations, of which one was substantiated.
 - Case # 200604502 involved a substantiated allegation of premises entered and/or searched against Police Officer Jacoby. The Board recommended Command Discipline, and the NYPD imposed Command Discipline A.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- On January 27, 2020, a FOIL request was sent to the Office of the New York City Comptroller requesting any notice of claim filed in relation to this incident. Upon receipt the response to this FOIL request will be added to the case file.
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Squad No.: 2

Investigator:	<u>Inv. Matthew Donaghy</u> Signature	<u>Inv. Matthew Donaghy</u> Print Title & Name	<u>March 26, 2020</u> Date
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Squad Leader:	<u>IM Alexander Opoku-Agyemang</u> Signature	<u>IM Alexander Opoku-Agyemang</u> Print Title & Name	<u>3/26/2020</u> Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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